

Thursday, March 5, 2009

House Meets At...	Votes Predicted At...
10:00 a.m. For Legislative Business Ten "One-minutes" Per Side	Last vote: ???

Any anticipated Member absences for votes this week should be reported immediately to the Office of the Majority Whip at 226-3210.

### Floor Schedule and Procedure

- **H. Res. 205 – Rule providing for further consideration of H.R. 1106 – Helping Families Save Their Homes Act of 2009 (Rep. Hastings–Rules):** The rule provides that amendment number 1 printed in House Report 111-21, to be offered by Rep. John Conyers, Jr., shall be perfected by the modification printed in the report of the Committee on Rules accompanying this rule. Debate on the rule will be managed by Rep. Hastings, and consideration will proceed as follows:
  - One hour of debate on the rule.
  - Possible vote on a Democratic Motion ordering the previous question. **Democrats are urged to VOTE YES.**
  - Vote on adoption of the rule. **Democrats are urged to VOTE YES.**
- **Postponed Suspension Votes:**
  1. H.Res. 146 - Designating March 2, 2009, as "Read Across America Day" (Rep. Markey (CO) – Education and Labor)
  2. H.Res. 153 - Commending the University of Southern California Trojan football team for its victory in the 2009 Rose Bowl (Rep. Watson - Education and Labor)
  3. H.Con.Res. 14 - Supporting the goals and ideals of Multiple Sclerosis Awareness Week (Rep. Lee (CA) – Energy and Commerce)

- **Complete consideration of H.R. 1106 – Helping Families Save Their Homes Act of 2009 (Reps. Conyers/Frank–Judiciary/Financial Services)**: Pursuant to H.Res. 190, amendments to the bill may be offered only in the order listed in House Report 111-21. Furthermore each amendment may be offered only by the Member listed next to it in House Report 111-21. *(This information is listed at the end of today's Daily WhipLine)*. Pursuant to H.Res. 205, amendment number 1, to be offered by Rep. John Conyers, Jr., shall be perfected by the modification printed in the report of the Committee on Rules accompanying the resolution. Further consideration of the bill will proceed as follows:
  - Possible debate and votes on amendments to the bill.
  - Possible debate and vote on Republican Motion to Recommit the bill.
  - Vote on passage of the bill. **Democrats are urged to VOTE YES.**
- **Dispose of H.Res. \_\_\_\_\_ - Raising a question of the privileges of the House (Rep. Flake – Privileged Resolution)**

## **Bill Summary & Key Issues**

### **Helping Families Save Their Homes Act of 2009**

The deep contraction in the economy and in the housing market has created devastating consequences for homeowners and communities throughout the country.

- Millions of responsible families who make their monthly payments and fulfill their obligations have seen their property values fall, and are **now unable to refinance at lower mortgage rates.**
- Millions of workers have lost their jobs or have had their hours cut back, and they are **now struggling to stay current on their mortgage payments** – with nearly 6 million households facing possible foreclosure.
- Neighborhoods are struggling, **as each foreclosed home reduces nearby property values** by as much as 9 percent.

President Obama is working with Congress to address the current crisis in the housing market. The Helping Families Save Their Home Act is a critical first step toward providing the legislative authority needed to implement President Obama's comprehensive Homeowner Affordability and Stability Plan, which he announced and outlined last Wednesday. Nearly all of the provisions included in this bill are part of the President's plan. The bill will support recovery in the housing market and ensure that American workers who have played by the rules and acted responsibly can stay in their homes and continue paying off their mortgages. The bill will assist homeowners making a good-faith effort to stay

current on their mortgage payments, while attempting to prevent the destructive impact of foreclosures on families and communities. The Helping Families Save their Home Act will reduce foreclosures and strengthen communities.

## **SUMMARY OF THE HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009**

### **TITLE I - PREVENTION OF MORTGAGE FORECLOSURES**

#### **Bolster FHA and VA Authority to Protect Investors and Ensure Loan Modifications Occur:**

The bill helps veterans and other homeowners to avoid foreclosure by allowing the Department of Veterans Affairs, the Federal Housing Administration, and U.S. Department of Agriculture to guarantee and/or insure mortgage loans modified either out of court or in a bankruptcy case. This will provide financial incentives for lenders to voluntarily modify mortgage loans in lieu of foreclosure. The bill expands the FHA's mortgage loan modification abilities to keep more people in their homes and thereby reduce foreclosures by allowing a reduction of interest payments of up to 30% of the outstanding loan balance.

#### **Judicial Modifications of Home Mortgages During Bankruptcy for Borrowers Who Have Run Out of Options:**

The bill will allow judicial modifications of certain mortgage loans on a homeowner's principal residence if the homeowner meets specified stringent criteria. Under current law, virtually every other secured claim may be judicially modified, including claims secured by vacation homes, family farms, and investment properties. This relief is extended **only to mortgages that originated prior to the Act's date of enactment** so that bankruptcy judges can modify mortgages when families exhaust other options. Specifically, the bill would:

- Permit the mortgage's repayment period to be extended so that the mortgage is more affordable.

- Authorize an exorbitant mortgage interest rate to be reduced to a level that will keep the mortgage affordable over the long-term while also compensating creditors appropriately for risk.

- Require the homeowner facing foreclosure to attempt to notify the lender and work out a loan modification before he or she can apply for judicial modification.

- Ensure lenders provide proper notice when assessing fees and allow judges to waive prepayment penalties.

- Maintain the debtor's legal claims against predatory lenders while in bankruptcy.

- Prohibit a borrower convicted of fraud in obtaining the mortgage from being allowed to modify his or her mortgage under this legislation.

The bill would **NOT**:

Rewrite the 2005 Bankruptcy Code amendments. The current legal prohibition on modifying primary mortgages dates back to 1978 when most mortgages were 30-year fixed rate loans owned by local banks rather than the rapidly changing adjustable rate mortgages that have been originated and sold to investors widely in recent years.

Leave financial institutions with losses by letting families completely escape from their financial obligations, because the bill is structured to encourage families to pay their mortgages to the greatest extent that they are able.

Increase the cost of borrowing for other homeowners because, compared to the sole alternative of foreclosure, this measure would maximize, not lessen, the value of troubled mortgages for the lender and not result in additional costs to recoup. And, the bill is limited to existing mortgages, i.e., mortgages originated prior to the date of enactment of the bill.

## **TITLE II – FORECLOSURE MITIGATION AND CREDIT AVAILABILITY**

**Servicer Safe Harbor** : The bill provides a safe harbor from liability to mortgage servicers who engage in loan modifications workouts or other loss mitigation, regardless of any provisions in a servicing agreement, so long as the servicer acts in a manner consistent with the duty established in Homeowner Emergency Relief Act (maximize the net present value (NPV) of pooled mortgages to all investors as a whole; engage in loan modifications for mortgages that are in default or for which default is reasonably foreseeable; the property is owner-occupied; the anticipated recovery on the modification would exceed, on an NPV basis, the anticipated recovery through foreclosure). The bill also requires mortgage servicers who modify loans under the safe harbor to regularly report to Treasury on the extent, scope and results of the servicer's modification activities.

**HOPE for Homeowners** : The bill amends the HOPE for Homeowners Program provisions of the National Housing Act to encourage more lenders to participate by reducing the fees and write downs, providing incentives for mortgage servicers to engage in modifications under the Program, and reducing administrative burdens to loan underwriters by making the requirements more consistent with standard FHA practices.

Specially, the bill would:

- Put the HUD Secretary in charge of running the program, leaving the Program Board's role as an advisory capacity.

- Change the upfront fee from 3% to "up to 2%."

- Change the annual fee from 1.5% to "up to 1%."

- Require the HUD Secretary to weigh both maximization of participation and collection of premiums when setting upfront and annual fees.

Provide for “up to 50%” of appreciation profit share (instead of requiring 50%) and allow the sharing of this profit with the existing first lender to induce loan write downs.

Cap profit sharing at up to the appraised value of the property when the existing loan was made.

Permit payments to existing servicers of up to \$1,000 for each successful refinance.

Re-instate authority to conduct an auction to refinance loans on wholesale or bulk basis.

Include a number of administrative changes, including:

- requiring conformity to FHA endorsement policies, as much as possible;

- eliminating the March 1, 2008, income affordability test;

- eliminating certification of no intentional default on other debts, applying certification of no false information being provided to the new FHA refi loan, and eliminating reference to going to jail because of false statements;

- providing for less prescriptive language regarding collection of income tax returns;

- requiring HUD to conform program documents, forms, and procedures to those in place for regular FHA loans;

- eliminating extraneous loan-to-value restrictions on use of second lien loans to maintain property; and

- barring borrowers with a net worth of more than \$1 million from participation in the Program.

***Offset: Reduces existing TARP authority by \$2.316 billion to offset cost of program changes.***

**FHA Approval:** Contains numerous provisions to better ensure that predatory lending entities and individuals are not allowed to participate in the FHA home mortgage insurance program. Specifically, the bill would:

- Require HUD approval of all parties participating in the FHA single family mortgage origination process.

- Allow HUD to impose a civil money penalty against loan originators who are not HUD-approved and yet participate in FHA mortgage originations.

- Make clear that an applicant is ineligible for approval if the entity or any officer, partner, director, principal, or employee of the entity is: a) suspended or debarred by any Federal agency; b) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant’s integrity, competence or fitness to meet the responsibilities of an approved mortgagee; c) subject to unresolved findings contained in a HUD or other governmental audit, investigation, or review; d) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees; e) convicted of a felony related to participation in the real estate or mortgage loan industry; or f) in violation of provisions of the S.A.F.E. Mortgage Licensing Act.

Require that HUD receive notice of the debarment and any change in licensing status of a FHA approved mortgagee.

Require HUD to expand the existing FHA process of reviewing new applicants for FHA approval for the purpose of identifying those representing a high risk to the Mutual Mortgage Insurance Fund and implement procedures that expand the number of loans reviewed by FHA for lenders approved within the last 12 months, and include a process for random reviews that is based on loan volume by newly approved participants.

Require FHA approved mortgagees to use their HUD registered company names in all advertizing and to keep copies of all advertisements.

**Deposit Insurance:** The bill amends the Federal Deposit Insurance Act and the Federal Credit Union Act to enhance the liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures. Specifically, the bill would:

Make permanent the temporary increase in deposit insurance coverage for both the FDIC Deposit Insurance Fund and the National Credit Union Administration (NCUA) Share Insurance Fund to \$250,000 (the temporary increase is currently scheduled to sunset on December 31, 2009), and include an inflation adjustment provision for future coverage.

Extend the time limit for an FDIC Restoration Plan to rebuild the reserve ratio of the Deposit Insurance Fund from 5 years to 8 years. Establish a 5-year restoration plan for the NCUA, which is currently required to restore the equity ratio of the Share Insurance Fund within one year.

Increase the FDIC's borrowing authority from the Treasury Department from \$30 billion to \$100 billion and the NCUA's Share Insurance Fund's borrowing authority from \$100 million to \$6 billion.

Any amounts borrowed must be used only for insurance purposes.

Neither the FDIC nor the NCUA has ever used this borrowing authority.

The FDIC borrowing authority amount has not changed since 1991, even though the size of the industry has tripled. The NCUA borrowing authority has not changed since 1972 when it was established, even though the size of the industry has increased from \$13.8 billion in 1972 to \$813 billion at year-end 2008.

Any money borrowed must be repaid, with interest, pursuant to a repayment schedule that must be in effect prior to receiving any money, and which is subject to a requirement to consult with and report to Congress.

Allow the FDIC to charge systemic risk special assessments by rulemaking, on both insured depository institutions and depository institution holding companies. For holding company assessments, the concurrence of the Treasury would be required.

## **Amendments to H.R. 1106 – Helping Families Save Their Homes Act of 2009**

### **1. Conyers (MI) (managers')-**

#### **Judiciary provisions:**

The Amendment requires the homeowner to certify that he or she contacted the mortgage holder and provided specified documentation at least 30 days *before* filing for bankruptcy relief, unless a foreclosure sale is imminent. With respect to the pre-filing certification, the debtor must specify that: (1) he or she contacted the lender (or its agent) regarding loan modification; (2) provided the lender (or its agent) a written statement of the debtor's current income, expenses and debt; and (3) he or she considered any qualified loan modification offered to the debtor by the lender (or its agent).

The Amendment ensures that the legislation works seamlessly with the Obama Administration's Homeowner Affordability and Stability Plan, as implemented on March 4, 2009 ("Obama Plan"). It amends Bankruptcy Code section 101 to add a definition of "qualified loan modification," which is defined as a loan modification agreement made in accordance with the Obama Plan guidelines. To qualify as such, the agreement must reduce the debtor's mortgage payment (including principal and interest) and payments for various other specified expenses (i.e., real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) to a percentage of the debtor's income in accordance with such guidelines. The payment may not include any period of negative amortization and it must reflect the mortgage's fully amortized outstanding principal. In addition, the agreement must not require the debtor to pay any fees or charges to obtain the modification. And, the agreement must permit the debtor to continue to make these payments notwithstanding the debtor having filed for chapter 13 relief as if he or she had not filed for such relief.

The Amendment revises the good faith standard with respect to a mortgage modified under new section 1322(b)(11). The court may not approve a modification if the debtor can afford to repay his or her mortgage without such modification. Where the debtor seeks to reduce the mortgage's principal, the court must find that such modification is in good faith by considering whether the mortgage holder (or entity collecting payments on behalf of such holder) has offered to the debtor a qualified loan modification that would enable the debtor to pay such debts and such loan.

The Amendment provides further strengthened protections for mortgage holders whose claims are judicially modified by:

requiring courts to use FHA appraisal guidelines where the fair market value of a home is in dispute;

ensuring that payments made pursuant to a mortgage modification are made in equal amounts; and

increases the pro-rata share of any surplus that results from the sale of the chapter 13 debtor's home that the mortgage holder is to receive during the pendency of the case and extends the period from four to five years.

The Amendment permits the court, on request of the debtor or the mortgage holder, to approve a mortgage modification proposing an interest rate reduction that is lower than that specified in new section 1322(b)(11), providing the modification does not reduce the mortgage principal and the total month mortgage payment is reduced to a percentage of the debtor's income in accordance with the Obama Plan's guidelines.

The Amendment requires several critical studies.

One GAO study will examine: (1) the number of debtors who filed for the purpose of restructuring their principal residence mortgages; (2) the number of mortgages restructured under this provision that subsequently defaulted; (3) a comparison between the effectiveness of voluntary modifications outside of bankruptcy with judicial modifications; (4) the number of cases where appeals were filed concerning mortgages restructured under this provision and the number of judgments overturned on appeal; and (5) the number of disciplinary actions against bankruptcy judges arising out of the actions in restructuring mortgages. The report on the results of the study should include a recommendation as to whether the amendments should sunset.

Another GAO study will conduct: (1) a comprehensive review of the effects of these bankruptcy amendments; (2) a survey of whether they should be limited to certain types of homeowners; and (3) a recommendation on whether they should remain in effect.

A study by the Comptroller of the Currency, in coordination with the Director of the Office of Thrift Supervision, that will examine various mortgage modification data as reported to the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

The Amendment establishes a nationwide mortgage fraud task force within the Justice Department to address mortgage fraud in the United States. The task force would coordinate with Federal, State and local law enforcement to establish mortgage fraud initiatives; provide training; and collect and disseminate data. The task force is authorized to establish a toll-free hotline for reporting mortgage fraud; provide the public with access to information and resources with respect to mortgage fraud; establish a data base; and make legislative proposals. The provision defines mortgage fraud as a material misstatement, misrepresentation or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase, or insure a loan.

The Amendment expresses a Sense of the Congress that mortgage holders, institutions and mortgage servicers should not initiate a foreclosure proceeding or sale until the foreclosure mitigation provisions,



such as Hope for Homeowners Program and the President's Homeowner Affordability and Stability Plan, have been implemented and determined to be operational by the Treasury Secretary and the Secretary of HUD.

**Financial Services provisions:**

Clarifies that loan modifications undertaken pursuant to guidelines issued by the Secretary of the Treasury are eligible for the servicer safe harbor, and defines "Secretary" to mean the Secretary of the Treasury.

Clarifies FHA mortgage approval requirements, and requires HUD to seek public comment before implementing certain approval provisions.

Makes technical, clarifying and other minor revisions to the HOPE for Homeowners Program, to facilitate its use and effectiveness, including authorizing HUD to permit second liens related to closing or refinance cost assistance provided by states or localities using CDBG or HOME funds or by a housing finance agency.

Requires the OCC and the OTS to collect and report quarterly to Congress mortgage modification data, and to issue mortgage modification data collection and reporting requirements for banks.

Adds a "Sense of Congress" that mortgage holders and servicers should not begin or continue a foreclosure proceeding on any principal residence until a federal systematic loan modification plan is operational. This foreclosure moratorium would not apply to mortgages modified under an FHA program such as Hope for Homeowners. Moratorium beneficiaries should have a duty to refrain from destroying, damaging, impairing, or committing waste on the property and to respond to reasonable requests from a servicer or creditor during the moratorium.

Adds a "Sense of Congress" that Treasury should use amounts made available under this Act to purchase mortgage revenue bonds for single-family housing issued through State housing finance agencies and local government and agencies.

Requires foreclosure prevention assistance provided under TARP to be made available for loans up to at least the GSE conforming loan limit in the jurisdiction in which the property is located.

Revises requirements for FHA reverse mortgages on leased land to require that the minimum lease term shall be established by FHA in relation to the expected life expectancy of the borrower.

2. **Price, Tom (GA)** - Would provide that if a homeowner who has had a mortgage modified in a bankruptcy proceeding sells the home at a profit, the lender can recapture the amount of principal lost in the modification.  
(10 minutes)

3. **Peters, Gary (MI)** - Would provide that, in the case of a debtor whose home is in foreclosure, the debtor could meet the pre-filing credit counseling requirement by receiving counseling either before filing or up to 30 days after filing.  
(10 minutes)
4. **Titus (NV)** - Would require a servicer that receives an incentive payment under the Hope for Homeowners program to notify all mortgagors under mortgages they service who are “at-risk homeowners” (as such term is defined by the Secretary), in a form and manner as shall be prescribed by the Secretary, that they may be eligible for the HOPE for Homeowners Program and how to obtain information regarding the program.  
(10 minutes)

### **Quote of the Day**

“The education and empowerment of women throughout the world cannot fail to result in a more caring, tolerant, just and peaceful life for all.”

— Aung San Suu Kyi

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